

Via Email

May 13, 2022

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

Mike and Faye Partsch

Tidewater Pipestone Infrastructure Corp.

www.aer.ca

Attention: Mike Partsch

Attention: Ryan Connery

Dear Sirs:

**RE: Request for Regulatory Appeal by Mike and Faye Partsch (Partsches)
Tidewater Pipestone Infrastructure Corp. (Tidewater)
Application No.: 1932929; Licence No.: F21177 (Licence)
Location: 00/05-36-071-07-W6M
Request for Regulatory Appeal No.:1934382 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered the Partsches' request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve the Licence. The AER has reviewed the Partsches' submissions and the submissions made by Tidewater.

For the reasons that follow, your request for a Regulatory Appeal is dismissed.

Section 38(1) of the *REDA* sets out the test for eligibility to request a regulatory appeal:

38(1) An **eligible person** may request a regulatory appeal of an **appealable decision** by filing a request for regulatory appeal with the Regulator **in accordance with the rules**.

[Emphasis added]

There are three key components to section 38(1), which are as follows:

1. **“Appealable Decision”** – Subsection 36(a) defines an “appealable decision”. For the present purposes, the relevant definition is contained in subsection 36(a)(iv). It says an appealable decision includes:

A decision of the Regulator that was made under an energy resource enactment¹, if that decision was made without a hearing

[Emphasis added]

¹ This includes: the *Coal Conservation Act*, the *Gas Resources Act*, the *Oil and Gas Conservation Act*, the *Oil Sands Conservation Act*, the *Pipeline Act*, the *Turner Valley Unit Operations Act*, a regulation or rule under and of the enactments.

Thus, to be an “appealable decision” the decision must be made under an energy enactment and there cannot have been a hearing.

2. **“Eligible Person”** – Subsection 36(b) defines an “eligible person” under an energy resource enactment. For the present purposes, the relevant definition is contained in subsection 36(b)(ii). It says an eligible person is:

A person who is directly and adversely affected by a decision referred to in clause (a)(iv) [a decision made under an energy resource enactment, if that decision was made without a hearing].

[Emphasis added]

Therefore, you must be a person who is directly and adversely affected by a decision.

3. **“In Accordance with the Rules”** – Section 30(3) requires that a request for a Regulatory Appeal be made within 30 days after the making of the decision for which an appeal is sought.

Reasons for Decision

Appealable Decision

The granting of the of the Facility Licence Amendment is an appealable decision, as the licence was issued under the *Oil and Gas Conservation Act* – an energy resource enactment – without a hearing.

In Accordance with the Rules

All materials were filed in accordance with the time requirements under the *Rules*. Therefore, the totality of the Request for Regulatory Appeal was filed in accordance with the *Rules*.

Eligible Person

To be eligible for a regulatory appeal, you must demonstrate that you may be directly and adversely affected by the AER’s decision to issue the Approval. The AER acknowledges the concerns put forward in your request for regulatory appeal, including but not limited to:

- Safety in the event of an incident, including the following sub-issues:
 - No information on an emergency plan; and
 - No information regarding Tidewater’s Liability Management Rating.
- Impacts on groundwater sources and water wells;
- Noise impacts;
- Air emissions;
- Health impacts;

- Impacts on reservoir integrity; and
- Impacts on property value;

Although not stated with the same degree of detail, the concerns you have raised and the impacts you have submitted in your request for regulatory appeal are substantially the same as those raised previously in the statements of concern (SOCs) and requests for regulatory appeals you have filed with respect to Tidewater's initial subsurface, facility and pipeline applications, the most recent of which being applications for Licence extensions in November 2021. In its April 2022 Request for Regulatory Appeal decision, the AER found that you had not demonstrated that you may be directly and adversely affected by the licence extension applications, which were subsequently approved. As the amalgamation of the existing facilities and the installation of the Additional Equipment approvals are related to the same well licences, these reasons continue to apply.

Specifically, you have expressed concerns with Tidewater's "increasing the potential hazard" to the local residents which you feel involves Tidewater's Liability Management Rating. A company's Liability Management Rating relates to its eligibility to hold or transfer licences under *Directives 006: Licensee Liability Rating (LLR) Program* and *Directive 024: Large Facility Liability Management Program*, it is not related to potential emergencies.

With respect to your safety concerns, Tidewater has submitted to the AER that it has a corporate Emergency Response Plan in place to deal with an emergency should one occur. This meets the requirements as set out in *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry* as there is no H2S associated with Tidewater's gas storage project, including the proposed Facility Licence Amendment.

The AER acknowledges you have also raised concerns regarding sound, odour, and water contamination. These concerns were addressed in previous SOC Decision Letters and Request for Regulatory Appeal Decisions. AER staff had reviewed the Noise Impact Assessment completed by Motive Acoustics in March 2021 which was submitted as a requirement of Tidewater's application and found that the predicted overall sound level was within the permissible limits under *Directive 038: Noise Control*. The Noise Impact Assessment provided by Motive Acoustics confirms all noise requirements will be met with the addition of the proposed equipment.

Your concerns regarding air pollution have been addressed through Tidewater's required compliance under *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting*. Tidewater has further advised that the Additional Equipment, specifically the incinerator, was being added to mitigate odor concerns as gases would be combusted on site, rather than vented.

Regarding stakeholder engagement on behalf of Tidewater, you confirmed you were notified of the proposed application by Tidewater.

With respect to Mrs. Partsch’s medical condition(s), there was no agreement reached between yourselves and Tidewater on how and with whom the Confidential Information would be shared. The AER has considered the Confidential Information submitted as part of the original SOC filing. The AER are not experts in the causation of medical matters, be it physical or mental conditions; the AER is concerned with operational matters. The AER has not been provided with extensive medical information to confirm or deny the causation, longevity, or existence of Mrs. Partsch’s condition(s). As such, it is not appropriate for the AER to comment on (or make a decision based on) the Confidential Information as part of the current Request for Regulatory Appeal.

With respect to property value, while the AER acknowledges the study referred to in your Request for Regulatory Appeal, no specific or “expert” information (from a realtor or property assessor etc.) evidencing a decrease in the value of their property has been provided to the AER.

Your lands and residence are approximately one kilometer (1.0 km) away from the lands to which the Facility Licence Amendment relates. You have not established a sufficient connection between the Facility Licence Amendment and the impacts with which you are concerned.

For the above reasons, the AER has decided that you have not demonstrated that you may be directly and adversely affected by a decision made under an energy resource enactment and as such are not eligible to request a regulatory appeal in this matter. Therefore, your request for a regulatory appeal is dismissed.

Sincerely,

<Original signed by>

Jeffrey Moore
Associate General Counsel

<Original signed by>

Barbara Pullishy
Senior Advisor, Regulatory

<Original signed by>

Martin Paetz
Senior Advisor, Compliance